

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2008

CORAM

The Honourable Mr. Justice P.K. MISRA
and
The Honourable Mr. Justice K. KANNAN

Review Application No.72 of 2006

1. The Secretary to Government,
Home Department (Police III),
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Chennai - 600 004.

3. The Chairman,
The Tamilnadu Uniformed Services,
Recruitment Board,
Chennai - 600 002. ... Petitioners

vs

M. Murugan ... Respondent

Review Application to review the judgment dated 10.11.2005 made in W.P. No.36002 of 2005 on the file of this Court.

For Petitioners : Mr. P.S. Raman,
Addl. Advocate General
assisted by Mr. K. Elango, Spl.G.P.

For Respondent : Mr. Muthumani Duraisamy,
Senior counsel for
Mr. Kandavel Duraisamy

O R D E R

(Order of the Court was made by P.K. MISRA, J.)

Heard Mr. P.S. Raman, learned Additional Advocate General, appearing for the petitioners and Mr. Muthumani Duraisamy, Senior Counsel, appearing for the respondent.

2. The present review application has been filed by the State Government for reviewing the order dated 10.11.2005 in so far as it relates to W.P. No.36002 of 2005.

3.1 For disposal of this review application, a little narration of background facts is necessary. Series of litigations had been initiated before the Administrative Tribunal, challenging the process of selection for the post of Sub Inspector for the years 1997 -1998. Ultimately, Writ Petition Nos.17639 to 17660 of 2000 etc., batch were disposed of with certain observations by a Division Bench, by order dated 25.2.2005.

3.2 The entire direction was contained in paragraph 73 of the said judgment and it is extracted below :-

"73. In such circumstances, we pass the following order:

- i) The Selection of both of Sub-Inspectors of Police (Men and Women) pursuant to the selection made for the vacancies notified for the year 1997-98 by resorting to zone-wise selection was invalid inasmuch as such zone-wise selection was impermissible under Special Rules governed for Tamil Nadu Police Sub-ordinate Service.
- ii) Having regard to the fact that such selection and appointment came to be made as early as far back as in the year 1999, at this distant point of time, applying the ratio of the Hon'ble Supreme Court referred to in earlier paragraphs (i.e. para 61 to 64), we are not inclined to set aside the said selection.
- iii) Even as regards the 53 candidates with reference to whom the Directorate of Vigilance and Anti-corruption has submitted its final report holding that their selection was tainted with mal-practices, we hold that while their appointments cannot be set aside at the present juncture, their continuation in service will depend upon the final outcome of the criminal proceedings pursuant to the final report dated 18.6.2004.
- iv) The concerned 53 persons should be informed about our orders relating to them by a specific notice to be issued to them.
- v) While modifying the order of the Tribunal, we hold that from amongst the applicants who are the contesting respondents both Men and Women covered by W.P.Nos.17639 to 17660 of 2001, 17822 to 17827, 17830, 17899 to 17903 and 18349 to 18356 of 2003, such of those contesting respondents who have secured the lowest cut off marks in the category, namely, OC, BC, MBC, SC and ST after the interview, should be directed to undergo medical test and after following the usual formality of police verification about their antecedents, and in the event of those contesting respondents ultimately, coming out successful, should be placed on probation and sent for police training which should be followed by their appointment and regularization as per the prescribed regulations.
- vi) Such of the contesting respondents who were not called for interview, shall be called for interview and after coming out successful in the interview, if their cut off marks is more than the last cut off marks in the respective category, they shall be directed to undergo medical test and after following the usual formality of police verification about their antecedents, and in the event of those contesting respondents ultimately, coming out successful, should be placed on probation and sent for police training which should be followed by their appointment and regularization as per the prescribed regulations.
- vii) The above said direction will also hold good in respect of the applicants who have filed O.A.Nos.10211 and 10324 of 1998, 1354, 4693 and 6796 of 1999, 955, 4212, 5668, 5669, 5671, 6659 and 8616 of 2000, 2557, 6301 and 6746 of 2001, 1920, 2189, 2286, 2424, 3073, 3633, 3745, 3751, 3999, 4194, 5001, 5142, 5518, 5546, 5687, 5688, 6412, 6429, 6458 and 6459 of 2002 and 18, 19, 129, 330, 388, 389, 796, 2130 of 2003.
- viii) The other Original Applications, namely, O.A.Nos.2579, 2715, 3864, 3929, 3930, 4084 of 2003 and 26, 78, 207, 1625 and 1626 of 2004 as well as W.P.Nos.32253, 32255, 32499, 33155, 33136, 22344, 22015, 23063 and 34275 of 2004 are dismissed on the ground of delay and laches.
- ix) The Petitioners-State Government are directed to take steps against the concerned officers in accordance with the Tamil Nadu Pension Rules, based on the outcome of the criminal proceedings.
- x) We direct the petitioners to follow the above said directions and complete the above said exercise

and issue appropriate orders as regards the final outcome within four weeks from the date of receipt of copy of this order."

4. In the judgment under review, the Division Bench disposed of the writ petition by observing :-
"2. It is brought to our notice that the questions raised / claim made by the petitioners is covered by a Division Bench decision of this Court dated 25.02.2005 made in Writ Petition Nos.17639 to 17660 of 2001 etc., batch. While disposing of batch of writ petitions, the Division Bench, after considering the claim of the petitioners therein and the stand taken by the respondents as well as basing reliance on the decisions of the Supreme Court, passed the following order.

. . .

It is brought to our notice that among the above directions, direction No.(vi) is applicable to both the petitioners. There is no serious dispute with regard to the same. In such circumstances, Writ Petition Nos.36002 and 36003 of 2005 are ordered on the above terms."

5. It is not in dispute that as per Condition No.8 in the notification issued by the Tamil Nadu Uniform Services Recruitment Board, the persons qualifying in the physical efficiency test shall be allowed to appear at the written examination. So far as physical efficiency test is concerned, the notification contemplates that a candidate is required to appear in rope climbing, which is compulsory, either long-jump or high-jump and either 100 metres running or 1500 metres running. In each of such three disciplines, a candidate is required to secure one star equivalent to 5 marks. So far as 100 metres running is concerned, to secure one star a candidate was required to complete the same within 15 seconds. The respondent had completed 100 metres running in 15.35 seconds, whereas the required cut-off time, as already indicated, was 15 seconds. Thus, he was found ineligible for appearing in the written examination and admittedly he had not appeared in the written examination.

6. Since there is no dispute that, as per the notification, a person disqualified in the physical efficiency test shall not be allowed to attend the written examination, there was no question of allowing such a person to appear at the interview. In W.P.No.17639 of 2001 & batch, disposed of on 25.2.2005, the direction was relating to candidates who had appeared at the written examination, but had not been called for the interview. Obviously, the ratio of the said judgment could not have been made applicable in the case where a candidate was not eligible to appear at the written examination. Since the impugned judgment in WP.No.36002 of 2005 proceeded on an obviously erroneous assumption, the present Review Application has been filed.

7. Learned Additional Advocate General appearing for the petitioners in the Review Application has submitted that when a judgment proceeds on an obviously erroneous assumption, such a judgment is required to be reviewed. Learned Senior Counsel appearing for the respondent, on the other hand, submitted that the judgment under review had practically proceeded on a concession and, therefore, there is no scope to review such order. It is further submitted by him that keeping in view the limited scope for review, the impugned order should not be reviewed.

8. It is no doubt true that a court while deciding an application for review, is not expected to convert itself as an appellate authority. It is also true that there may be a tendency on the part of a subsequent Bench to convert itself into as an appellate authority while dealing with the Review Application. Keeping in view the above parameters, it has to be examined whether the order is required to be reviewed.

9. We have already indicated that the order in W.P.No.36002 of 2005 was passed on the basis of an obvious erroneous assumption. It is no doubt true that the Advocate for the State had contributed in no mean measure by not bringing to the notice of the Bench that the candidate was not eligible to appear in the written examination and in fact had not appeared in such examination. If such a fact

would have been made known to the Court, either by the Counsel for the State or the Counsel for the candidate, there is no doubt in our mind that the Division Bench would not have issued the direction, which was ultimately issued. Since the order proceeded on an obvious erroneous assumption, we feel it is a fit case where such order is required to be reviewed in the interest of justice.

10. Apart from the above, even if the order is not reviewed, no useful purpose would be achieved and the present contesting respondent cannot secure the job. This is so because, as per the scheme of selection, the marks obtained in the interview are to be added to the marks obtained in the written examination. Since the respondent had not appeared at the written examination, obviously, adding a few marks in the interview, is not going to catapult the respondent within the zone of consideration. In other words, giving effect to such order would be only an exercise in futility.

11. For the aforesaid reasons, we allow the Review Application and dismiss the Writ Petition No.36002 of 2005. No costs.

(P.K.M.,J) (K.K.,J)

31.07.2008

Index : Yes

Internet: Yes

ssa/dpk

P.K. MISRA, J

and

K. KANNAN, J

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